At the trial a statement made to the police in the course of an enquiry was put to a witness without the necessary formalities being followed. Secondly the record of certain proceedings before the Protector of Chinese was produced without being proved. On appeal it was contended that there were irregularities which came within the scope of section 422 of the Criminal Procedure Code.

Held, that before that section can be applied an Appellate Court should be reasonably certain that the Court below should have arrived at the same conclusion if the irregularity complained of had not occurred.

Held further, that what is complained of must be an irregularity as distinct from an illegality. Both these matters were illegalities.

CRIMINAL APPEAL.

M. Diamond for appellant.

T. V. A. Brodie, Deputy Public Prosecutor, for respondent.

Murray-Aynsley, J.—In this appeal various grounds are set forth. I think that only two points are worthy of notice. These relate to points of procedure. Firstly a statement made to the Police in the course of an enquiry was put to a witness without the necessary formalities being followed. Secondly the record of certain proceedings before the Protector of Chinese was produced without being proved in any way.

The learned Assistant Legal Adviser does not dispute the fact that these irregularities occurred, but contends that the matter is one which comes within the scope of section 422 of the Criminal Procedure Code. In order that any matter should come within the scope of that section it is in the first case necessary that an Appellate Court should be reasonably certain that the Court below should have arrived at the same conclusion if the irregularity complained of had not occurred.

It is further necessary that what is complained of should be what is called an irregularity as distinct from an illegality. If it is an illegality the question as to whether it was material is superfluous.

I may add that I consider that the production of an unproved document by a witness is not a question of "the improper admission or rejection of any evidence."

I consider that both these matters were illegalities and the conviction cannot standing.

There must be a new trial before a different Magistrate.

Appeal allowed. New trial ordered.

[APPELLATE CRIMINAL JURISDICTION]

POYSER, C.J.

May 10, 1940.

J. F. GOOCH vs. PUBLIC PROSECUTOR.

[SELANGOR MAGISTRATE'S CRIMINAL APPEAL No. 19 of 1940]

Road Traffic Enactment (No. 17 of 1937), section 25 (1)—Fast traffic proceeding along slow traffic lane—Passing vehicle on near side—Dangerous driving.

The appellant was charged with and convicted of dangerous driving under section 25 (1) of the Road Traffic Enactment. He drove his car rapidly along a slow traffic lane and passed a vehicle on the near side. There was no evidence that his act endangered or was likely to endanger any person.

Held, that in the absence of evidence of dangerous driving, it is not an offence for fast moving traffic to proceed along the slow traffic lane or to pass a vehicle on the near side.

J. T. Tosswill for appellant.

A. J. Grattan-Bellew, Deputy Public Prosecutor, for respondent.

Poyser, C.J.—The appellant was charged as follows:

> "That you on or about 11th January, 1940 at 6.25 p.m. at Java Street, Kuala Lumpur, did drive a motor car No. B. 1435 on the public road dangerously, an offence punishable under section 25 (1) of the Road Traffic Enactment (No. 17/37)".

He was convicted and fined $65, and his driving licence was ordered to be endorsed.

The undisputed facts are that the appellant passed two cars in Java Street on the near side and then turned to the left up Klyne Street, and in order to do so proceeded along a part of the slow traffic lane. His speed was estimated by prosecution witnesses at 25–30 miles, and he was travelling in second or third gear. The appellant said he was going at 18–20 miles per hour.

The evidence does not in my opinion establish the charge of dangerous driving, for there was no evidence that the appellant's act endangered or was likely to endanger any person. Mr. Pennefather Evans could not recollect what traffic there was on the slow traffic lane, and Mr. Kinder could not say whether the appellant passed any cyclist or other slow moving traffic. Mr. Dobree, however, stated he himself would have passed the cars in front of him if it was not for the slow traffic lane.

The whole question, therefore, there being no evidence of dangerous driving, is, has the appellant committed any other offence? In my opinion he has not; it is not an offence for fast moving traffic to proceed along the slow traffic lane, nor is it an offence to pass a vehicle on the near side. It might be dangerous under certain circumstances to pass a vehicle on the near side, but in this case there was no evidence that it was.

I would accordingly allow the appeal and set aside the conviction; the fine paid will be refunded to the appellant, and the order for the endorsement of his licence set aside.

Appeal allowed. Conviction quashed.

[APPELLATE CIVIL JURISDICTION]

HORNE, J.

May 10, 1940.

WONG WENG HONG vs. TSOI LAU YING.

[PAHANG CIVIL APPEAL No. 5 of 1940]

Trustee Enactment (Cap. 61), sections 25 and 27 —Power of Attorney—Delegation of Powers by administratrix.

The respondent, in Hong Kong, granted a power of attorney to Wan Sow, by which he was empowered

> "to exercise all privileges, powers and rights vested in me as administratrix of the estate of Loo Chan San (letters of administration therein having been granted to me by the Honourable Judge in Kuantan Administration Petition No. 1 of 1937) and to carry out all duties thereby imposed on me".

There were also ancillary powers.

Acting under this power of attorney, Wan Sow brought this suit in the name of the respondent to recover the value of rubber coupons alleged to belong to her in her capacity of administratrix. The Magistrate rejected the contention that the power of attorney was invalid and held that Wan Sow "is the agent of Tsoi Lau Ying and is entitled to institute the suit and appear in Court. Section 25 of the Trustee Enactment gives a trustee (which includes an administratrix) power to employ agents. Section 27 of the Enactment need only be invoked when the trustee wishes to delegate the discretion vested in him".

Held, that the intention of the respondent was to delegate her duties, powers and rights as administratrix to Wan Sow: therefore the power should have been registered in manner prescribed by section 27 of the Trustee Enactment. Although part of the power might authorise the collection of the rubber coupons, an executive act, yet the authority for the exercise of this power is the instrument itself, and that instrument is legally ineffective without registration of the statutory declaration required under section 27 and cannot be relied upon.

Cases referred to:—

(1) *In the Goods of Hale* 3 P. & D. 207, 31 L. T. 799.

(2) *Green v. Whitehead* (1930) 1 Ch. 38.

CIVIL APPEAL.

E. A. S. Wagner for appellant.
Edgar Joseph for respondent.

Horne, J.—Wan Sow alleging he was the agent under a power of attorney for Tsoi Lau Ying, administratrix of the estate of Loo Chan San, sued the appellant for delivery of a share of rubber coupons issued in respect of land in which the estate of Loo Chan San has an undivided 34/200 shares; the remaining shares are held or represented by the appellant. The appellant objected to giving up the share of the coupons due to the administratrix on the ground that Wan Sow was not a duly authorized agent of the administratrix and had, therefore, no authority to claim the coupons or the proceeds of the rubber.

It appears that the appellant was in fact managing the land. He received coupons for the whole; employed a contractor to tap and smoke the rubber, and deliver it to Kuantan. The Magistrate rejected his contention that the power of attorney was invalid and held that by this power of attorney Wan Sow "is the agent of Tsoi Lau Ying and is entitled to institute the suit and appear in Court. Section 25 of the Trustee Enactment gives a trustee (which includes an administratrix) power to employ agents. Section 27 of the Enactment need only be invoked when the trustee wishes to delegate the discretion vested in him". He found that the value of the share of the administratrix to be $239.02, and gave judgment for the respondent.

The appellant's ground of appeal is that the Magistrate is wrong in law in holding Wan Sow to be the agent of the administratrix-respondent and should have dismissed the suit. *Mr. Wagner's* argument is that the office of administratrix is not assignable and that this power of attorney being a complete assignment of the office is invalid. Alternatively, if the office may be delegated, then the power of attorney, not having been registered in compliance with section 27, there is no valid delegation. Further, the Magistrate is wrong in holding that this power of attorney appoints an agent by virtue of section 25 of the Trustee Enactment. He submits that the admini-